IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13-06-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NOs.1103 OF 2000 and 37772 OF 2003
AND
WPMP.NO.45888 OF 2003

M/s. N.M.S. Rice Mill,
rep. by its Partner,
T.P. Nallasivam
S.F.No.527/C, R.S.No.177/3
Panchalingapuram,
Saminathapuram Post,
Modakurichi 638 104.
Erode Taluk & District. .. Petitioner

Vs.

1. The Government of Tamil Nadu,
   rep. by its Secretary,
   Industries Department,
   Fort St. George, Chennai 9.

2. The Tamil Nadu Industrial
   Investment Corporation Ltd.,
   rep. by its Managing Director,
   692, Anna Salai, Chennai 35.

3. The Branch Manager,
   Tamil Nadu Industrial Investment
   Corporation Ltd.,
   405/1, Perundurai Road, Erode 11. .. Respondents

W.P.NO.1103 of 2000 : Petition filed under Article 226 of the Constitution of India for the issuance of certiorarified mandamus to call for the records of the 3rd respondent in ERD(S)/97-98 dated 16.4.1997 and the order of the 2nd respondent in Project/DDT/1999-2000 dated 14.1.2000 and quash them and direct the respondents to forthwith disburse the balance of subsidy to the petitioner.

W.P.No.37772 of 2003 : Petition filed under Article 226 of the Constitution of India for the issuance of certiorarified mandamus to call for the records of the respondents relating to the order of 3rd respondent in TIIC/ERD/LAO-KJS/2003-04 dated 8.12.2003 and quash the

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same and direct the respondents to forthwith consider the case of the petitioner for waiver of interest and re-scheduling of re-payment of loan as offered to other similarly placed industries in so far as petitioner is concerned.

For Petitioner in both WPs. : Mr. Kandavadivel Doraisamy for M/s.Muthumani Doraisamy

For Respondents 2&3 in WP.1103/2000 : Mrs. B.Saraswathi

For Respondent No.2 in WP 37772 of 2003 : Mr.J.B. Dolia

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COMMON JUDGMENT

Both the writ petitions being inter-connected, were heard together and shall be disposed of by this common judgment.

2. W.P.No.1103 of 2000 has been filed challenging the order dated 16.4.1997 for recalling the subsidy order of the respondent. The prayer made in the said writ petition is for quashing such impugned order and for issuing a direction to the respondents to disburse the balance subsidy amount.

W.P.No.37772 of 2003 has been filed challenging the order of foreclosure issued by Respondent No.2.

3. The petitioner has originally applied for loan from respondents 2 & 3 for the purpose of establishing a Rice Mill. On 27.11.1995, a loan of Rs.20 lakhs was sanctioned. However, the petitioner had not actually availed any part of the loan till the end of May 1996. The first respondent issued G.O.Ms.No.41 dated 18.3.1996 revising the eligibility for subsidy on Block level basis instead of Taluk level basis. As per such G.O., Modakurichi Panchayat Union Block was notified as one of the Blocks in backward area enabling any person to obtain subsidy for establishing industries in such area. After the aforesaid G.O., was issued, the petitioner filed another application for the loan on 26.4.1996 and Respondent No.2 sanctioned a term loan of Rs.18,80,000/- and subsidy/bridge loan of Rs.4,43,000/- under the impression that the petitioner was eligible for subsidy/bridge loan as the area in which industry was set up came within the backward area as per G.O.Ms.No.41. After disbursement of the first instalment of subsidy/bridge loan on 28.6.1996, the third respondent by letter dated 16.4.1997 indicated that the petitioner was not eligible for such subsidy/bridge loan and called upon the petitioner to repay the said amount which had already been disbursed to the petitioner.

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Thereafter, the petitioner made a representation indicating that he was eligible for such subsidy, but, such representation was rejected by the 2nd and 3rd respondents and similar representation made to the first respondent, namely, the State Government, was also rejected. Ultimately, the second respondent issued communication dated 16.4.1997 indicating that the petitioner was not eligible for any subsidy. At that stage, the petitioner filed W.P.NO.1103 of 2000 challenging the communication dated 16.4.1997 and the subsequent communications rejecting the representation of the petitioner. In the said writ petition, an order of stay was passed. Subsequently, the third respondent issued demand notice dated 19.11.2003 indicating that a sum of Rs.27,52,896/- was payable towards principal, interest and other dues. On 8.12.2003, the third respondent passed a foreclosure order calling upon the petitioner to pay Rs.29,64,298/- towards principal and interest till 30.11.2003. Such foreclosure order was followed by a further demand notice dated 17.12.2003 indicating the total liability of the petitioner as Rs.31,66,760/- calculated till 31.12.2003. The foreclosure order dated 8.12.2003 is being challenged in W.P.No.37772 of 2003.

4.It is appropriate to consider first the contentions raised in the earlier writ petition relating to payability of subsidy/bridge loan.

5. As per the original proposal of the petitioner, he was not entitled to any subsidy as the place of industry was within Erode, which was not considered as a Backward area. The respondents have recalled the order relating to subsidy on the footing that the petitioner had taken steps to set up industry before 18.3.1996 and since he had applied for loan and loan had been sanctioned on 29.11.1995 and had also taken steps for construction of the building before 18.3.1996, the date on which G.O.Ms.No.41 came into force, he was not entitled to subsidy. Such interpretation was adopted by the respondents on the basis of clarification letter No.18057 dated 30.9.1996, which had been issued by the State Government. As per G.O.Ms.No.41 dated 18.3.1996, classification of industrially backward area was made on the basis of Blocks and Modakurichi Block, wherein the present industry Block was included as a Backward Block. The conclusion of the respondents is to the effect that since the petitioner had taken effective steps to set up the industry before 18.3.1996, the date on which G.O.Ms.No.41 came into force, he was not entitled to subsidy as per clause (c) of the clarification issued by the Government on 30.9.1996.

6. The relevant portion of the clarification is to the following effect :-

" 1) In respect of extension of State Capital Subsidy, the date of taking effective steps for implementing the

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project (tie-up of means of finance in the case of projects assisted by Institutions/Bank, the date of acquisition of land or placement of orders for machinery or commencement of building construction which ever is earlier in the case of self finance projects) is taken as the basis. In the case of extension of sales tax deferral/waiver concession, the date of commencement of commercial production is taken as the basis. In the present context of introduction of blocks, following strategy has been taken for extension of incentives to industries :-

a) For those projects that have taken effective steps on or prior to 17.3.96, the State subsidy incentives can be extended based on erstwhile taluk classification subject to the condition that these projects shall commence commercial production within 18 months say on or before 18.9.97. In respect of sales tax deferral/waiver the decision is that all the units which have purchased atleast the land before 18.3.96, can be considered provided they go into commercial production atleast by 18.9.97. If most Backward area becomes Backward or Backward area become Most Backward under new G.O,. the level of subsidy would remain at level as per earlier classification.

b) For those projects that have taken effective steps only after 17.3.96 and commercial production, incentives will be extended based on the new block classification order.

c) Similarly entrepreneurs who have started a project in area NOT classified as Backward / Most Backward based on earlier concept of Taluk before the issue of G.O. dated 18.3.96 under the impression that they are Not entitled to certain incentive in the form of State Capital Subsidy / Interest Free Sales Tax deferral/waiver etc., should not now claim these benefits just because now these areas after the issue of G.O.Ms.No.41, dated 18.3.96 under New Block Classification have come under Backward/Most Backward areas, as they started knowing fully well that they won't get these benefits."

7. There is no dispute that as per G.O.Ms.No.41 dated 18.3.1996, Modakurichi Block was considered as one of the Backward Blocks. Therefore, if an entrepreneur takes step to set up an industry after 18.3.1996, he would be eligible to get subsidy/bridge loan. In the present case, the contention of the respondents is to the effect that since the petitioner had submitted the project for setting up of rice mill much before G.O.Ms.No.41 came into force and had applied for loan which had been sanctioned on 27.11.1995 and even taken steps for construction of the building, it must be taken that he had taken effective steps for implementing the project before 17.3.1996 and was not eligible as per condition 1(c) of the

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clarification issued by the Government on 30.9.1996.

8. The contention of the petitioner on the other hand is to the effect that even though the loan had been sanctioned in November, 1995, no loan had been availed by the petitioner and a fresh application was made only in April, 1996, after G.O.Ms.No.41 came into force. It is further contended by him that as per Condition No.7 in the sanction order dated 29.11.1995, since sanction was not availed within six months, it automatically lapsed and in fact a fresh loan application was made and a fresh loan was sanctioned in June, 1996, and, therefore, it must be taken that effective steps for implementing the project were taken only after G.O.Ms.No.41 came into force, and, therefore, the petitioner was entitled to subsidy/bridge loan.

9.A perusal of paragraph 1 of the clarification letter issued by the Government clearly indicates the meaning of the date of taking effective steps for implementing the project. The expression included in parenthesis clearly indicates the meaning to be assigned. As per such expression, tie-up of means of finance in case of projects assisted by institutions / banks is the date of taking effective steps for implementing the project. Similarly, in respect of self-finance projects, the date of acquisition of land of or placement of order for machinery or commencement of the building construction, whichever is earlier, is the date for taking effective steps for implementing the project.

10.In the present case, the respondents have construed that the petitioner had taken steps to commence construction of the building prior to 17.3.1996, and therefore, he had taken effective steps for implementing the project. However, the project in question was obviously not a self-finance project but it was a project assisted by institution, namely, the Tamil Nadu Industrial Investment Corporation Limited. Therefore, the date of acquisition of land or placement of order for machinery or commencement of the building construction is immaterial for considering the date of taking effective steps for implementing the project so far as the present industry is concerned. For the present industry, the date on which there was completed tie-up of means of finance can be considered as the date of taking effective steps for implementing the project.

11. It is of course true that loan had been sanctioned in November, 1995. However, undisputedly no loan amount had been availed by the petitioner. Even though a sum of Rs.20 lakhs had been sanctioned under the earlier sanction order, subsequently a loan of Rs.18,80,000/- had been sanctioned. Moreover there is difference in the interest payable. As per the first sanction letter, interest payable was 3.5% over and above SIDBI rate of refinance with a minimum of 17.50% per annum, whereas under the latter sanction,

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interest payable was 3.5% per annum over and above SIDBI rate of refinance with a minimum of 19.25% per annum. While sanctioning the loan of 18.8 lakhs on 31.5.1996, respondents 2 and 3 had also clearly indicated the eligibility for subsidy/bridge loan at Rs.4.43 lakhs. It is only the latter loan which was availed by the petitioner and on the basis of such sanction, even the first instalment of subsidy/bridge loan of Rs.1,68,000/- had been paid. In the earlier sanction order it is shown that capital to be invested was Rs.11 lakhs and the term loan sanctioned was Rs.20 lakhs. In the subsequent sanction it was indicated that capital to be invested was Rs.7.75 lakhs and the term loan was Rs.18.8 lakhs and the subsidy was Rs.4,43,000/-. In such circumstances, the contention of the petitioner that he had taken effective steps only after availing the loan amount as per the subsequent sanction appears to be reasonable and by applying the principle of promissory estoppel and legitimate expectation, the contention of the petitioner appears to be acceptable. In such view of the matter, the impugned order in W.P.NO.1103 of 2000 is liable to be quashed.

12. The main contention raised in the subsequent W.P.No.37772 of 2003 is relating to arbitrary nature of the order passed by the respondents 2 and 3. It is contended that Respondents 2 and 3 have shown various amount as outstanding towards principal / interest at different stages without properly taking into consideration the payments made by the petitioner from time to time.

13. A cursory glance at various notices issued by the respondents establishes such contention to some extent. Moreover, the order of the respondents in denying the payment of subsidy to the petitioner has been quashed in the connected writ petition. If the respondents 2 and 3 would not have passed the impugned order recalling the subsidy/ bridge loan, such amount would have been made available to the petitioner as per the norms, in which event, the amount would have been either disbursed to the petitioner or adjusted against the dues thus reducing the amount payable.

14.The amount payable towards the subsidy should be made available now and should be adjusted towards the amount due to the Corporation. Since the order of foreclosure has been passed on certain apparently contradictory figures, which are available from two demand notices and the order of foreclosure, the order relating to foreclosure is quashed. It is however made clear that after making adjustment in the manner indicated, it would be open to the Corporation to take fresh steps for recovering the amount including taking steps for foreclosure.

15. In the writ petition it is also contended that the Corporation has a scheme for one time settlement. Though the High Court while dealing with the matter under Article 226 of the

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Constitution, cannot compel the Corporation to enter into one time settlement, it is always open to the Corporation to consider any such offer of one time settlement. For the aforesaid purpose, the petitioner may make a proper representation within a period of 30 days from the date of receipt of the order, in which event, such representation may be considered by the Corporation on its own merit. However, it is made clear that no opinion is expressed on this aspect.

16. Accordingly, both the writ petitions are disposed of subject to the above clarifications and directions. There would be no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

dpk
To

1. The Secretary to the Government of Tamil Nadu
   Industries Department,
   Fort St. George, Chennai 9.

2.The Managing Director
The Tamil Nadu Industrial
   Investment Corporation Ltd.,
   692, Anna Salai, Chennai 35.

3. The Branch Manager,
   Tamil Nadu Industrial Investment
   Corporation Ltd.,
   405/1, Perundurai Road, Erode 11.

+2ccs to M/s. Muthumani Doraisami, Advocate Sr 23639

JRG (CO)
km/16.6.

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